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ABSTRACT

This document presents basic information and materials on eligibility and service options for students with attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD) under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973. An introduction notes that the three main service options for students with ADD/ADHD continue to be either the general education classroom, special education services, or Section 504 accommodations. The first section presents common questions and answers regarding service options. These questions address: screening and interventions, referral, procedural safeguards, evaluation procedures, eligibility, and location of services (least restrictive environment). The second section provides a chart detailing similarities and differences between Section 504, IDEA, and the Americans with Disabilities Act. The following section provides an overview of Section 504 and focuses on the student placement process. Next is a list of 36 possible academic accommodations for students with ADD/ADHD. Also included are two policy letters from the Department of Education's Office of Civil Rights and Office of Special Education Programs regarding service options. (DB)

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Students with Attention Deficit Disorders ADD/ADHD

Eligibility Issues and Service Options under the Individuals with Disabilities Education Act (IDEA) and Section 504

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Introduction

The purpose for this document is to assist in clarifying common issues and questions in regards to eligibility and service options for students with attention deficit disorder (ADD) or attention deficit hyperactive disorder (ADHD).

The three main service options for students with ADD/ADHD continue to be one or more of the following:

- General education classroom
- Special education services
- Section 504 accommodations

The following pages will give some information about special education and Section 504 in relation to the issue of ADD/ADHD. Also, included are two important OCR/OSEP policy letters that help clarify service options for students with ADD/ADHD.

Common Questions and Answers Regarding Service Options

SCREENING AND INTERVENTIONS

1. Q. If a student is experiencing academic or behavioral difficulties in the general education classroom, what should the teacher do?

   A. A teacher should always try strategies that have been successful for other students before asking for help. If the strategies don't work, a referral should be made to the school-based support team. Most schools have a "pre-referral" team made up of general classroom teachers, counselors and others to suggest interventions for the referring teacher. Every effort should be made before referring a student for an evaluation under special education or Section 504.

REFERRAL

2. Q. If the problems persist, the interventions are unsuccessful, and the teacher(s) suspect an attention deficit disorder, what should be done?

   A. A referral should be made to special education or Section 504 for a comprehensive evaluation. It is best practice to evaluate under special education for a possible learning disability, emotional disturbance, other health impairment or traumatic brain injury. If one of the disabilities exist and the student also has ADD/ADHD, the ADD/ADHD can also be addressed on the student's IEP.

PROCEDURAL SAFEGUARDS

3. Q. Are the same procedural safeguards available to parents under Section 504 as the Individuals with Disabilities Education Act?

   A. Procedural safeguards under the Section 504 regulation are stated more generally than in special education. The Section 504 regulation requires the school to make available a system of procedural safeguards that permits parents to challenge actions regarding the identification, evaluation, or educational placement of their child whom they believe needs special education or related services. The Section 504 regulations require that the system of procedural safeguards include notice, an opportunity for the parents or guardians to examine relevant records, an impartial hearing with opportunity for participation by the parents or guardian, representation by counsel, and a review procedure. Procedural

safeguards should always be provided to the parent whenever written notice is given, this holds true for both Section 504 and special education.

EVALUATION PROCEDURES

4. Q. Is a medical evaluation necessary as part of the assessment process?

   A. Special education and Section 504 do not necessarily require that a school district conduct a medical assessment of a student who is suspected of having ADD/ADHD. If a school district determines that in a particular case a medical assessment is necessary to make an appropriate evaluation, then the school district must ensure that the student receives this assessment at no cost to the parents. However, if alternative assessment methods meet the evaluation criteria, then these methods are suitable.

   The school district can make a request to the parents that they use their private insurance or if eligible, Medicaid coverage to pay for the medical examination. However, this option is totally voluntary.

5. Q. Is the school district obligated to conduct an evaluation under Section 504?

   A. Under Section 504, if parents believe that their child is disabled by ADD, the school must evaluate the child to determine whether he or she is disabled as defined by Section 504. Should it be determined that the student with ADD is disabled for purposes of Section 504 and needs only accommodations in the general classroom, rather than special education, those accommodations are required by Section 504.

ELIGIBILITY

6. Q. Can a student with ADD/ADHD be served by special education as defined by the Individuals with Disabilities Education Act?

   A. A student with Attention Deficit Disorder (ADD) could be eligible as a student with a disability under the other health impairment (OHI) category solely by reason of ADD if the ADD is a chronic or acute health problem, the child experiences limited alertness by reason of the ADD, the ADD adversely affects the child's educational performance and, as a result, the child needs special education and related services.

7. Q. Why is "limited alertness" an essential characteristic for a student to be eligible under the category of other health impaired?

A. If a student is diagnosed with an attention deficit disorder, limited alertness would be the inability to attend to essential classroom instructions and activities. This inability could adversely affect the student's educational performance.

8. Q. Besides "other health impaired," could the student with ADD/ADHD be served by special education?

A. Yes, if the student first qualifies as being learning disabled, seriously emotionally disturbed or having traumatic brain injury. In such case, the issues relating to the ADD/ADHD would need to be addressed on the IEP.

9. Q. If a student with ADD/ADHD is not found to be eligible for special education, could that student be eligible under Section 504?

A. Yes, if the team determines that the student has a physical or mental impairment that substantially limits a major life activity and is in need of services. In the case of ADD/ADHD, the major life activity would be learning.

LOCATION OF SERVICES — LRE

10. Q. Do special education and Section 504 least restrictive environment requirements differ for students with ADD?

A. The least restrictive environment requirements of special education and Section 504 are virtually identical as applied to students with ADD just as they do to all other students with disabilities. However, Section 504 calls for a "demonstration" before a student can be moved to a more restrictive environment.

Similarities and Differences Between Special Education and Section 504

COMPARISON

Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
TYPE	A Civil Rights Law	An Education Act	A Civil Rights Law
TITLE	The Rehabilitation Act of 1973	The Individuals With Disabilities Education Act (IDEA)	Americans With Disabilities Act of 1990 (ADA)
PURPOSE	Is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education.	Is a federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure a free appropriate public education for students with disabilities.	Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
RESPONSIBILITY	General education	Special education	Public and private schools, business establishments and public buildings. (services)
FUNDING	State and local responsibility(no federal funding)	State, local, and federal. IDEA funds cannot be used to serve students eligible only under Section 504	Public and private responsibility (no federal funding)
ADMINISTRATOR	Section 504 coordinator (Systems with 15 plus employees)	Special education director or designee	Requirement for school districts. Using a 504 coordinator is suggested.
SERVICE TOOL	Accommodations and/or services	Individualized Education Program (IEP). Some IEP's will include Section 504 accommodations necessary for success in the general classroom.	Reasonable accommodations and legal employment practices

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Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
POPULATION	Identifies person as disabled so long as she/he meets the definition of qualified persons with disabilities; i.e., has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others.	Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as disabled by others.
ELIGIBILITY	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity, or is regarded as disabled by others. The student is not required to need special education services to be protected.	A student is only eligible to receive special education and related services if the multidisciplinary team determines that the student has a disability under one of the thirteen qualifying conditions and requires special education services.	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.
FREE APPROPRIATE PUBLIC EDUCATION	A student could receive special education services and/or related services and/or accommodations.	A student must first be eligible and need special education before they are entitled to a related service.	Addresses education in terms of accessibility requirements. Requires private and public entities not to use employment practices that discriminate on the basis of a disability.

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Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
ACCESSIBILITY	Federal regulations regarding building and program accessibility requires that reasonable accommodations be made.	Requires that modifications must be made if necessary to provide access to a free appropriate public education.	Requires that public programs be accessible to individuals with disabilities.
UNDUE HARDSHIP	Consideration is given for the size of the program, extent of accommodation, and cost relative to the total school budget.	Budget and administrative convenience is never an excuse.	Consideration is given to the size of the business and its budget, type of operation, nature and cost of accommodation.
DRUG AND ALCOHOL USE	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be eligible for accommodations.	Drug and alcohol use is not covered under special education.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes a direct threat to property or safety of others is not considered a disability.
CONTAGIOUS DISEASES	Individual with disabilities excludes any individual with a contagious disease that renders the individual unable to perform the job.	Could be eligible under the category of "other health impaired."	Permits qualification standard requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others.
PROCEDURAL SAFEGUARDS	Both require notice to the parent or guardian with respect to identification, evaluation, and placement.		Makes provisions for public notice, hearings, and awarding attorney fees.

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Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
PROCEDURAL SAFEGUARDS CONT.		Notice provisions are much more comprehensive. Minimum requirements of the notice are specified.	Self-evaluations and transition plans are required and updated annually.
NOTICE AND CONSENT	Notice is required before a "significant change in placement." Written consent would be considered a best practice	Written notice is required prior to any change in placement.	
EVALUATIONS	Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Requires written parental notice. Written parental consent is considered a best practice. Requires periodic reevaluations. Reevaluation is required before a significant change in placement.	A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team. Consent is required before the initial evaluation is conducted. Requires reevaluations to be conducted at least every 3 years. A reevaluation is not required before a significant change in placement. However, most students covered by IDEA are also eligible under Section 504.	All schools should conduct or update their Section 504 self-evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occuring with any individual with disabilities.

Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
EVALUATIONS CONT.	No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.	Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation.	
SERVICES	When interpreting evaluation data and making service decisions, both laws require districts to: * Draw upon information from a variety of sources. * Assure that all information is documented and considered. * The service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data and placement options. * Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment — LRE). * Requires notice and evaluation before any change of services.		
REVIEW OF PROGRAM	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually, or before any significant change.	
GRIEVANCE PROCEDURES	Requires districts to provide a grievance procedure for parents, students, and employees.	Does not require a grievance procedure. Complaint Procedures (SEA)	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.
COMPLAINT PROCEDURES	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred.	A formal complaint process is required. Parents can file a complaint with the state, a decision must be provided within 60 days.	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred.

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Issues	Section 504	Individuals With Disabilities Education Act	Americans with Disabilities Act
DUE PROCESS	Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due process hearings. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. Delineates specific requirements.		Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party.
MEDIATION	Not required, however mediation should always be suggested.	Not required, however mediation should always be suggested.	Not required, however mediation should always be suggested.
EXHAUSTION	Administrative hearing is not required prior to OCR involvement or court action.	The parent or guardian should exhaust all adminstrative hearings before seeking court action.	An administrative hearing is not required prior to OCR involvement or court action.
ENFORCEMENT	Enforced by the U.S. Office for Civil Rights. Regional offices are located throughout the United States.	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Board of Education and the Office of Special Education Programs.	Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.

Section 504
Overview and Placement Process

Section 504 is a federal statute that prohibits discrimination based upon a disability. Obligations for school districts start when federal funds are received.

Section 504 covers eligible students, employees and other individuals with disabilities for reasonable accommodations that enable them to work or learn. A team knowledgeable of the person determines if the individual meets eligibility criteria. The following is the definition of a disability under Section 504.

A person may be considered disabled under the definition of Section 504 if the individual:

1. has a mental or physical impairment which substantially limits one or more of such person's major life activities.

   "Major life activities" include functions such as:

   - Caring for one's self
   - Walking
   - Seeing
   - Speaking
   - Learning
   - Performing manual tasks
   - Hearing
   - Breathing
   - Working

   When a condition does not substantially limit a major life activity, the individual does not qualify for services under Section 504.

2. has a record of such an impairment; or

3. is regarded as having such an impairment.

"The second and third prongs of the definition only become a factor if discrimination has occurred because of the "record" or "history."

Process for Determining Services

The Section 504 coordinator should ensure that the following has occurred:

Initial Intervention

1. If a student experiences educational difficulties, a School Based Support Team (SBST) meets to discuss the concerns.
2. The SBST suggests intervention strategies to help correct the difficulties. The primary function of the SBST is to offer assistance to teachers.
3. If the strategies are unsuccessful, the team can make a referral for evaluation to Section 504, Special Education, or Chapter 1.

Referral

4. Referrals are accepted from parents, professional staff, students, and/or community agencies.
5. The presenting problem(s) and previous remedies are considered and reviewed. The summary should include all current information and recommendations.

Notification

6. The school district notifies the parents or guardians, in writing, of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and of procedural safeguards.

Written Consent

7. Even though Section 504 does not require written consent before the initial evaluation, it is an obligation under the Hatch Amendment. Consent should always be considered a best practice.

Evaluation

8. The school district evaluates all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement.

Eligibility

9. Section 504 Team–a recommended strategy is to use the School Based Support Team as the Section 504 Team. The team meets and analyzes the evaluation data to determine if the individual has a mental or physical impairment which substantially impairs a major life activity and is in need of special accommodations.

Written Consent

10. Even though Section 504 does not require written consent before the initial service, it is an obligation under the Hatch Amendment. Consent should always be considered best practice.

Services

11. These factors were considered by a group of individuals knowledgeable about the student, disability, evaluation, and service options:
    a. evaluation results;
    b. Section 504 eligibility;
    c. the student's unmet needs;
    d. services and/or accommodations based on eligibility; and
    e. discuss and plan possible staff inservice.

Implementation

12. The school district staff makes the necessary accommodations to allow for the student's disability. Parents should be consulted and given opportunity for input regarding the accommodations.
13. The accommodations and/or services are implemented.

Review

14. Each student's accommodations and/or services are reviewed periodically.

–Best Practice–

The team should review the accommodations at least annually.

Possible Academic Accommodations for Students with ADD/ADHD

- Adjust student seating.
- Use simple, concise instructions.
- Provide a peer tutor/helper.
- Teach compensatory strategies.
- Administer medication.
- Monitor stress and fatigue; adjust activities.
- Modify assignments.
- Change instructional pace.
- Provide supervision during transitions, disruptions, field trips.
- Use study guides, organizing tools.
- Modify testing procedures.
- Provide counseling.
- Initiate frequent parent communication.
- Establish a school/home behavior management program.
- Provide training for staff and parents.
- Have the student use an organizer–train in organizational skills.
- Establish a cue between teach and student.
- Assign chores/duties around room/ school.
- Modify environment to avoid distractions.

- Have child work alone or in a study carrel.
- Highlight required or important information/directions.
- Place assignments, directions on tape for auditory learner.
- Provide a checklist for student, parents, and/or teacher to record assignments or completed tasks.
- Use a time to assist student to focus on given task or number of problems in time allotted – *stress* they need to be done *correctly*.
- Have student re-state or write directions/instructions.
- Allow student to respond in a variety of different modes, i.e., may place answers for tests on tape instead of paper.
- Give student opportunity to stand while working.
- Provide additional supervision to and from school.
- Furnish an FM system.
- Modify student's work area with barriers.
- Inservice other students and staff, with parent permission.
- Develop a behavior modification plan.
- Supply treats and rewards to promote behavior change.
- Prescribe physical activity, exercise, etc.
- Determine trigger points and prevent action leading to trigger points.
- Provide a sociometric/sociogram design, such as circle of friends.

OSEP/OCR Policy Letters

18 IDELR 116
1 ECLPR ¶ 158

Joint Policy Memorandum (ADD)

Office of Special Education and Rehabilitative Services

September 16, 1991

Robert R. Davila, Assistant Secretary, Office of Special Education and Rehabilitative Services. Michael L. Williams, Assistant Secretary, Office for Civil Rights. John T. MacDonald, Assistant Secretary, Office of Elementary and Secondary Education.

- ATTENTION DEFICIT DISORDERS (ADD/ADHD)
- INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)
- Eligibility Criteria, In General
- Rehabilitation Act (Section 504), Facilities/Persons Covered by Section 504

Summary

The Assistant Secretaries for the Office of Special Education and Rehabilitative Services, the Office for Civil Rights, and the Office of Elementary and Secondary Education issued a joint memorandum on the provision of educational services to children with attention deficit disorder (ADD). According to the memorandum, children with ADD who require special education or related services are presently eligible under the IDEA categories of "other health impairment," "specific learning disability," or "serious emotional disturbance." Therefore, a separate category for ADD conditions is not necessary under the IDEA. In addition, children with ADD who do not require special education or related services may nevertheless be covered by the Section 504 regulations if their ADD substantially limits a major life activity, such as learning. Under Section 504, school districts are obligated to provide regular or special education programs, including necessary modifications and supplementary aids and services, to qualified children with ADD based on their individual needs.

I. Introduction

There is a growing awareness in the education community that attention deficit disorder (ADD) and attention deficit hyperactive disorder (ADHD) can result in significant learning problems for children with those conditions.[1] While estimates of the prevalence of ADD vary widely, we believe that three to five percent of school-aged children may have significant educational problems related to this disorder. Because ADD has broad implications for education as a whole, the Department believes it should clarify State and local responsibility under Federal law for addressing the needs of children with ADD in the schools. Ensuring that these students are able to reach their fullest potential is an inherent part of the National education goals and AMERICA 2000. The National goals, and the strategy for achieving them, are based on the assumptions that: (1) all children can learn and benefit from their education; and (2) the educational community must work to improve the learning opportunities for all children.

This memorandum clarifies the circumstances under which children with ADD are eligible for special education services under Part B of the Individuals with Disabilities Education Act (Part B), as well as the Part B requirements for evaluation of such children's unique educational needs. This memorandum will also clarify the responsibility of State and local educational agencies (SEAs and LEAs) to provide special

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education and related services to eligible children with ADD under part B. Finally, this memorandum clarifies the responsibilities of LEAs to provide regular or special education and related aids and services to those children with ADD who are not eligible under Part B, but who fall within the definition of "handicapped person" under Section 504 of the Rehabilitation Act of 1973. Because of the overall educational responsibility to provide services for these children, it is important that general and special education coordinate their efforts.

II. Eligibility for Special Education and Related Services under Part B

Last year during the reauthorization of the Education of the Handicapped Act [now the Individuals with Disabilities Education Act, Congress gave serious consideration to including ADD in the definition of "children with disabilities" in the statute. The Department took the position that ADD does not need to be added as a separate disability category in the statutory definition since children with ADD who require special education and related services can meet the eligibility criteria for services under Part B. This continues to be the Department's position.

No change with respect to ADD was made by Congress in the statutory definition of "children with disabilities"; however, language was included in Section 102(a) of the Education of the Handicapped Act Amendments of 1990 that required the Secretary to issue a Notice of Inquiry (NOI) soliciting public comment on special education for children with ADD under Part B. In response to the NOI (published November 29, 1990 in the *Federal Register,*) the Department received over 2000 written comments, which have been transmitted to the Congress. Our review of these written comments indicates that there is confusion in the field regarding the extent to which children with ADD may be served in special education programs conducted under Part B.

A. Description of Part B

Part B requires SEAs and LEAs to make a free appropriate public education (FAPE) available to all eligible children with disabilities and to ensure that the rights and protections of Part B are extended to those children and their parents. 20 U.S.C. 1412(2); 34 CFR §§ 300.121 and 300.2. Under Part B, FAPE, among other elements, includes the provision of special education and related services, at no cost to parents, in conformity with an individualized education program (IEP). 34 CFR § 300.4.

In order to be eligible under Part B, a child must be evaluated in accordance with 34 CFR §§ 300.530-300.534 as having one or more specified physical or mental impairments, and must be found to require special education and related services by reason of one or more of these impairments.[2] 20 U.S.C. 1401(a)(1); 34 CFR § 300.5. SEAs and LEAs must ensure that children with ADD who are determined eligible for services under Part B receive special education and related services designed to meet their unique needs, including special education and related services needs arising from the ADD. A full continuum of placement alternatives, including the regular classroom, must be available for providing special education and related services required in the IEP.

B. Eligibility for Part B services under the "Other Health Impaired" Category

The list of chronic or acute health problems included within the definition of "other health impaired" in the Part B regulations is not exhaustive. The term "other health impaired" includes chronic or acute impairments that result in limited alertness, which adversely affects educational performance. Thus, children with ADD should be classified as eligible for services under the "other health impaired" category in instances where the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. In other words, children with ADD, where the ADD is a chronic or acute health problem resulting in limited alertness, may be considered disabled under Part B solely on the basis of this disorder within the "other health impaired" category in situations where special education and related services are needed because of the ADD.

C. Eligibility for Part B services under other Disability Categories

Children with ADD are also eligible for services under Part B if the children satisfy the criteria

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applicable to other disability categories. For example, children with ADD are also eligible for services under the "specific learning disability" category of Part B if they meet the criteria stated in §§ 300.5(b)(9) and 300.541 or under the "seriously emotionally disturbed" category of Part B if they meet the criteria stated in § 300.5(b)(8).

III. Evaluations under Part B

A. Requirements

SEAs and LEAs have an affirmative obligation to evaluate a child who is suspected of having a disability to determine the child's need for special education and related services. Under Part B, SEAs and LEAs are required to have procedures for locating, identifying and evaluating all children who have a disability or are suspected of having a disability and are in need of special education and related services. 34 CFR §§ 300.128 and 300.220. This responsibility, known as "child find," is applicable to all children from birth through 21, regardless of the severity of their disability.

Consistent with this responsibility and the obligation to make FAPE available to all eligible children with disabilities, SEAs and LEAs must ensure that evaluations of children who are suspected of needing special education and related services are conducted without undue delay. 20 U.S.C. 1412(2). Because of its responsibility resulting from the FAPE and child find requirements of Part B, an LEA may not refuse to evaluate the possible need for special education and related services of a child with a prior medical diagnosis of ADD solely by reason of that medical diagnosis. However, a medical diagnosis of ADD alone is not sufficient to render a child eligible for services under Part B.

Under Part B, before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, "a full and individual evaluation of the child's educational needs must be conducted in accordance with requirements of § 300.532." 34 CFR § 300.531. Section 300.532(a) requires that a child's evaluation must be conducted by a multidisciplinary team, including at least one teacher or other specialist with knowledge in the area of suspected disability.

B. Disagreements over Evaluations

Any proposal or refusal of an agency to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child is subject to the written prior notice requirements of 34 CFR §§ 300.504-300.505.[3] If a parent disagrees with the LEA's refusal to evaluate a child or the LEA's evaluation and determination that a child does not have a disability for which the child is eligible for services under Part B, the parent may request a due process hearing pursuant to 34 CFR §§ 300.506-300.513 of the Part B regulations.

IV. Obligations Under Section 504 of SEAs and LEAs to Children with ADD Found Not To Require Special Education and Related Services under Part B

Even if a child with ADD is found not to be eligible for services under Part B, the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 CFR Part 104 may be applicable. Section 504 prohibits discrimination on the basis of handicap by recipients of Federal funds. Since Section 504 is a civil rights law, rather than a funding law, its requirements are framed in different terms than those of Part B. While the Section 504 regulation was written with an eye to consistency with Part B, it is more general, and there are some differences arising from the differing natures of the two laws. For instance, the protections of Section 504 extend to some children who do not fall within the disability categories specified in Part B.

A. Definition

Section 504 requires every recipient that operates a public elementary or secondary education program to address the needs of children who are considered "handicapped persons" under Section 504 as adequately as the needs of nonhandicapped persons are met. "Handicapped person" is defined in the Section 504 regulation as any person who has a physical or mental impairment which substantially limits a

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major life activity (*e.g.*, learning). 34 CFR § 104.3(j). Thus, depending on the severity of their condition, children with ADD *may* fit within that definition.

B. Programs and Services Under Section 504

Under Section 504, an LEA must provide a free appropriate public education to each qualified handicapped child. A free appropriate public education, under Section 504, consists of regular or special education and related aids and services that are designed to meet the individual student's needs and based on adherence to the regulatory requirements on educational setting, evaluation, placement, and procedural safeguards. 34 CFR §§ 104.33, 104.34, 104.35, and 104.36. A student may be handicapped within the meaning of Section 504, and therefore entitled to regular or special education and related aids and services under the Section 504 regulation, even though the student may not be eligible for special education and related services under Part B.

Under Section 504, if parents believe that their child is handicapped by ADD, the LEA must evaluate the child to determine whether he or she is handicapped as defined by Section 504. If an LEA determines that a child is not handicapped under Section 504, the parent has the right to contest that determination. If the child is determined to be handicapped under Section 504, the LEA must make an individualized determination of the child's educational needs for regular or special education or related aids and services. 34 CFR § 104.35. For children determined to be handicapped under Section 504, implementation of an individualized education program developed in accordance with Part B, although not required, is one means of meeting the free appropriate public education requirements of Section 504.[4] The child's education must be provided in the regular education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR § 104.34.

Should it be determined that the child with ADD is handicapped for purposes of Section 504 and needs only adjustments in the regular classroom, rather than special education, those adjustments are required by Section 504. A range of strategies is available to meet the educational needs of children with ADD. Regular classroom teachers are important in identifying the appropriate educational adaptations and interventions for many children with ADD.

SEAs and LEAs should take the necessary steps to promote coordination between special and regular education programs. Steps also should be taken to train regular education teachers and other personnel to develop their awareness about ADD and its manifestations and the adaptations that can be implemented in regular education programs to address the instructional needs of these children. Examples of adaptations in regular education programs could include the following:

> providing a structured learning environment; repeating and simplifying instructions about in-class and homework assignments; supplementing verbal instructions with visual instructions; using behavioral management techniques; adjusting class schedules; modifying test delivery; using tape recorders, computer-aided instruction, and other audio-visual equipment; selecting modified textbooks or workbooks; and tailoring homework assignments.

Other provisions range from consultation to special resources and may include reducing class size; use of one-on-one tutorials; classroom aides and note takers; involvement of a "services coordinator" to oversee implementation of special programs and services, and possible modification of nonacademic times such as lunchroom, recess, and physical education.

Through the use of appropriate adaptations and interventions in regular classes, many of which may be required by Section 504, the Department believes that LEAs will be able to effectively address the instructional needs of many children with ADD.

C. Procedural Safeguards Under Section 504

Procedural safeguards under the Section 504 regulation are stated more generally than in Part B. The

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Section 504 regulation requires the LEA to make available a system of procedural safeguards that permits parents to challenge actions regarding the identification, evaluation, or educational placement of their handicapped child whom they believe needs special education or related services. 34 CFR § 104.36. The Section 504 regulation requires that the system of procedural safeguards include notice, an opportunity for the parents or guardians to examine relevant records, an impartial hearing with opportunity for participation by the parents or guardian and representation by counsel, and a review procedure. Compliance with procedural safeguards of Part B is one means of fulfilling the Section 504 requirement.[5] However, in an impartial due process hearing raising issues under the Section 504 regulation, the impartial hearing officer must make a determination based upon that regulation.

V. Conclusion

Congress and the Department have recognized the need to provide information and assistance to teachers, administrators, parents and other interested persons regarding the identification, evaluation, and instructional needs of children with ADD. The Department has formed a work group to explore strategies across principal offices to address this issue. The work group also plans to identify some ways that the Department can work with the education associations to cooperatively consider the programs and services needed by children with ADD across special and regular education.

In fiscal year 1991, the Congress appropriated funds for the Department to synthesize and disseminate current knowledge related to ADD. Four centers will be established in Fall, 1991 to analyze and synthesize the current research literature on ADD relating to identification, assessment, and interventions. Research syntheses will be prepared in formats suitable for educators, parents and researchers. Existing clearinghouses and networks, as well as Federal, State and local organizations will be utilized to disseminate these research syntheses to parents, educators and administrators, and other interested persons.

In addition, the Federal Resource Center will work with SEAs and the six regional resource centers authorized under the Individuals with Disabilities Education Act to identify effective identification and assessment procedures, as well as intervention strategies being implemented across the country for children with ADD. A document describing current practice will be developed and disseminated to parents, educators and administrators, and other interested persons through the regional resource centers network, as well as by parent training centers, other parent and consumer organizations, and professional organizations. Also, the Office for Civil Rights' ten regional offices stand ready to provide technical assistance to parents and educators.

It is our hope that the above information will be of assistance to your State as you plan for the needs of children with ADD who require special education and related services under Part B, as well as for the needs of the broader group of children with ADD who do not qualify for special education and related services under Part B, but for whom special education or adaptations in regular education programs are needed. If you have any questions, please contact Jean Peelen, Office for Civil Rights; (Phone: 202/732-1635), Judy Schrag, Office of Special Education Programs (Phone: 202/732-1007); or Dan Bonner, Office of Elementary and Secondary Education (Phone: 202/401-0984).

[1] While we recognize that the disorders ADD and ADHD vary, the term ADD is being used to encompass children with both disorders.

[2] The Part B regulations define 11 specified disabilities. 34 CFR § 300.5(b)(1)-(11). The Education of the Handicapped Act Amendments of 1990 amended the Individuals with Disabilities Education Act [formerly the Education of the Handicapped Act] to specify that autism and traumatic brain injury are separate disability categories. *See* section 602(a)(1) of the Act, to be codified at 20 U.S.C. 1401(a)(1).

[3] Section 300.505 of the Part B regulations sets out the elements that must be contained in the prior written notice to parents:

> (1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

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(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

34 CFR § 300.505(a)(1)-(4).

[4] Many LEAs use the same process for determining the needs of students under Section 504 that they use for implementing Part B.

[5] Again, many LEAs and some SEAs are conserving time and resources by using the same due process procedures for resolving disputes under both laws.

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Parker, Letter to (ADD)

Office of Special Education Programs

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Digest of Inquiry

October 3, 1991

• As a condition for eligibility under the Part B category of "other health impaired," must a diagnosis of attention deficit disorder (ADD) be made by a medical doctor, or may such a diagnosis be made by health care professional other than a licensed physician?

• Does a state law or regulation requiring a medical diagnosis of attention deficit disorder (ADD) as a condition for special education eligibility supercede the federal Part B requirements?

• Is it possible for a child with attention deficit disorder (ADD) to be eligible for special education or related services under a category other than "other health impaired"?

Digest of Response

February 18, 1992

Medical Evaluation of ADD Is Not Mandatory

If a school district believes that a medical evaluation by a licensed physician is necessary to determine whether a child suspected of having attention deficit disorder (ADD) meets the eligibility criteria under the "other health impaired" category, then the school district must ensure that such an evaluation is conducted at no cost to the parents. However, if the school district believes that other effective means of measuring ADD are available, then qualified personnel other than licensed physicians may be used to conduct the evaluation, so long as all of the evaluation requirements under Regs. 300.530-300.534 are met.

Eligibility Determination May Not Be Limited to Medical Diagnosis of ADD

A state may require a medical diagnosis of attention deficit disorder (ADD) as part of an evaluation to determine eligibility under the "other health impaired" category, but it must also ensure that any other necessary evaluations by other professionals are conducted and considered as part of the eligibility determination process.

ADD Eligibility Is Not Limited to OHI Category

Children with attention deficit disorders (ADD) are not limited to eligibility under the category of "other health impaired"; they might also meet the criteria for eligibility under other Part B disability categories.

Text of Inquiry

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Thank you for your participation at the C.H.A.D.D. Conference two weeks ago. We were delighted by your excellent presentation and appreciate your taking time from such a busy schedule to speak there.

Since the conference we have received numerous positive responses to the Department's September 16, 1991 ADD Policy Memorandum. In the process of helping our members understand this new policy, we at C.H.A.D.D. wish to make certain that our own explanation and analysis accurately reflect Department intent. We have thus far generally been able to field most questions without problem, but I would like to raise two specific issues with you which may require some additional clarification and guidance.

First, you should note C.H.A.D.D.'s long history of advocating that professionals who are familiar with the process of evaluating children with attention deficit disorders, and who are legally authorized to perform such evaluations within their own states, should be able to perform such evaluations and diagnose ADD where it is present. We have maintained the view that such professionals might include physicians and/or clinical, counseling and school psychologists with appropriate training. While we understand that a medical diagnosis of ADD alone is not sufficient to render a child eligible for Part B services, we would like clarification on the issue of 1) whether the Department *requires* a diagnosis of ADD to be made *only* by a medical doctor as a condition for Part B OHI eligibility; or alternatively, whether the Department *permits* such diagnoses to be made by other trained health care professionals, including psychologists, for OHI eligibility purposes. A closely related question is 2) whether federal Part B regulations would supersede state Part B implementing regulations to the extent that the former permit ADD diagnoses by a broader range of professionals than the latter. Since our purpose for raising these questions is solely to make certain we are correctly advising parents of children with ADD about the new Department ADD Policy, I hope you can provide us with some immediate guidance on these particular points.

Second, we have also received some questions about when children with ADD may be legally served under Part B categories *distinct from* Other Health Impaired, such as SLD or SED, even when these children's *sole* disability is ADD. I recall from our September 18 Washington meeting the explanation by you and your Department colleagues that children with ADD should *not* receive special education and related services designed for other disability categories unless (i) such other disability actually *co-occurs* with ADD; and (ii) a child is eligible for services on the basis of such other disability *independently* from services required for ADD as an OHI disability. Section II.C. of the September 16 Department Policy Memorandum clearly supports this interpretation, but there nonetheless seems to be some uncertainty over the absence of explicit language making this Section applicable *only* to children with one or more Part B handicapping conditions *in addition to* ADD after the latter is identified under OHI. We would ask the Department to clarify this particular point as well, since we believe that such clarification will help avert misclassifying children solely with ADD.

We appreciate your consideration of our concerns, and look forward to hearing from you soon. Thank you again for your hard work to date on the ADD issue.

Text of Response

This is in response to your letter of October 3, 1991 to the Office of Special Education Programs (OSEP), in which you request further clarification of the Department's September 16, 1991 Memorandum on "Clarification of Policy to Address the Needs of Children with Attention Deficit Disorders with General and/or Special Education." Your specific questions and OSEP's responses follow.

> [Does] the Department *require* a diagnosis of ADD to be made *only* by a medical doctor as a condition for Part B OHI eligibility; or alternatively, [does] the Department *permit* such diagnosis to be made by other trained health care professionals, including psychologists, for OHI eligibility purposes? [Do] federal Part B regulations supersede State Part B implementing regulations to the extent that the former permit ADD diagnoses by a broader range of professionals than the latter?

The Part B definition of "other health impaired" (OHI) requires that a child be evaluated in accordance with the requirements of 34 CFR §§ 300.530-300.534 as having a chronic or acute health problem,

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resulting in limited strength, vitality, or alertness, that adversely affects a child's educational performance. 34 CFR § 300.5(a) and § 300.5(b)(7). However, the regulation at 34 CFR § 300.532(e) requires that each child's evaluation be conducted by a multidisciplinary team or group of persons, "including at least one teacher or other specialist with knowledge in the area of suspected disability." Based on this requirement, public agencies must ensure that the multidisciplinary team determining a child's eligibility under the "other health impaired" category includes an individual with knowledge in the area of the suspected disability. When a child is suspected of being "other health impaired" as a result of their ADD, the multidisciplinary team should include an individual who is knowledgeable about the possible adverse effects of ADD on a child's educational performance.

Services required under Part B may include medical services provided by a licensed physician to determine whether a child has a medically related disabling condition which results in the child's need for special education and related services. 34 CFR 300.13(b)(4). If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, the school district must ensure that this evaluation is conducted and is at no cost to the parents. However, if a school district believes there are other effective methods for determining whether a child suspected of having ADD meets the eligibility requirements of the OHI category under Part B, then it would be permissible to use other qualified personnel to conduct the evaluation, so long as all of the protection in evaluation requirements of 34 CFR §§ 300.530-300.534 are met. Further, it would not be inconsistent with Part B for a State to impose a requirement that a school district must ensure that a medical evaluation by a licensed physician is conducted as a part of an evaluation to determine the eligibility of a child suspected of having ADD for Part B services under the OHI category. However, public agencies must also ensure that decisions as to whether a child meets the eligibility requirements under Part B are made by the multidisciplinary team and are made in accordance with the requirements of 34 CFR § 300.532-300.533. If a State requires that a medical evaluation be included as part of all evaluations for eligibility determination for the OHI category, it must also ensure that any necessary evaluations by other professionals are also conducted and considered as part of the eligibility determination process.

In your letter you also ask the Department to clarify its position relative to the classification of children under other disability categories where the child's disability is ADD. (Section II.C. of the September 16, 1991 clarification memorandum.) Section II.C. of the clarification memorandum was intended to recognize the fact that children with ADD may *also* meet the criteria for a disability category other than OHI and thus could appropriately be classified under the other disability category. Children with ADD found to be eligible under Part B must receive special education and related services determined by the IEP team to be appropriate to meet their unique educational needs.

I am hopeful that this information is responsive to your inquiry. If we can provide further clarification of this issue please let me know.

Judy A. Schrag

Director

Office of Special Education Programs

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